## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

CHRISTOPHER PAUL and : SUSAN PAUL. :

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Plaintiffs,

Civil Action No.: 5:09-CV-296 (HL)

**V.** 

:

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY,

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Defendant.

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## ORDER

Plaintiffs have filed a Motion for Reconsideration (Doc. 37) of the Court's Order (Doc. 36) entered on November 4, 2010 granting Plaintiffs' Motion to Dismiss Without Prejudice on the condition that if Plaintiffs ever re-file any action against Defendant upon these or substantially similar facts in any court, Plaintiffs will be required to pay the costs and attorney's fees Defendant incurred in defending this action.

The Motion for Reconsideration is denied. First, a motion for reconsideration under Local Rule 7.6 is limited to five pages. Plaintiffs' Motion exceeds that number. Second, the law in this circuit is clear that in dismissing a case under Rule 41(a)(2), a court may assess costs and fees associated with the action. Ortega Trujillo v. Banco Central Del Ecuador, 379 F.3d 1298, 1301 (11th Cir. 2004). Third, a number of other courts have imposed similar conditions on re-filing on individual plaintiffs. A

fee and cost assessment is not something limited to corporate plaintiffs. See

Nwokocha v. Hartford Accident & Indem. Co., Civil Action No. 1:08-CV-2997, 2009

WL 2355982 (N.D. Ga. July 29, 2009); Etute v. Elkins, Civil Action No. 1:08-CV-149,

2009 WL 728548 (N.D. Ga. Mar. 19, 2009); Wright v. Standard Ins. Co., No. 8:07-

CV-1586, 2008 WL 5070228 (M.D. Fla. Nov. 24, 2008); Nesbitt v. Holmes County

Comm'rs, 2007 WL 2900229, at \* 2 (N.D. Fla. Oct. 2, 2007). Finally, it should be

noted that the Court considered awarding attorney's fees and costs to Defendants

as a condition of dismissing the complaint without prejudice. Contrary to Plaintiffs'

belief, the Court took Plaintiffs' financial condition into account, and decided rather

than imposing fees and costs now, it would condition the re-filing of the lawsuit on

the payment of fees and costs.

If Plaintiffs wish to avoid the fees and costs assessment, they still have the

option of withdrawing their Motion to Dismiss and proceeding with the case in this

Court. Plaintiffs also have the option to dismiss their case with prejudice.

**SO ORDERED**, this the 10th day of November, 2010.

/s/ Hugh Lawson

**HUGH LAWSON, SENIOR JUDGE** 

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